FRONT Report LINE

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No guns for convicted officers

New federal law affects all law enforcement

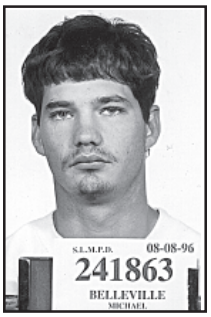
THE NEWLY AMENDED federal Gun Control Act prohibits anyone ever convicted of a misdemeanor crime of domestic violence from possessing a firearm or ammunition.

Enacted Sept. 30, 1996, the amendments to the Omnibus Consolidated Appropriations Act of 1997 also make it illegal to distribute a firearm or ammunition to any such person.

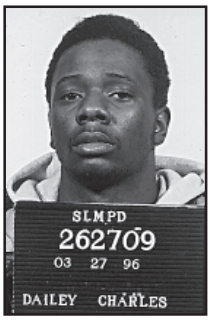
SEE FEDERAL, Page 2

Law enforcement agencies must ask all employees if they have been convicted of a misdemeanor crime of domestic violence. Every employee should be required to complete a form such as the one on **Page 3**.

2 FELONS ALREADY GRACING THE AG'S HOMEPAGE



Michael Belleville (left), St. Louis: Wanted for attempted stealing.



Charles Dailey, St. Louis: Wanted for first-degree murder, first-degree robbery, first-degree assault and armed criminal action.

WANTED: *Felons' mugs*

THE AG'S OFFICE is expanding efforts to catch Missouri's most wanted felons and needs help from law enforcement officials.

Mugshots and descriptions of the felons will be placed on the AG's homepage on the Internet. They also will be featured on the AG's monthly cable television program.

Officials are encouraged to send mugs and descriptions of fugitives to: Front Line, Attorney General's Office, PO Box 899, Jefferson City, MO 65102.

The AG's homepage can be found at www.state.mo.us

AG pushes crime-fighting initiatives for '97

AG JAY NIXON'S legislative priorities include 10 commonsense changes in state law:

NIXON

1. Provide juries a guilty but mentally ill option that requires punishment following treatment.
2. Prevent high school dropouts from receiving drivers licenses until age 18 and revoke licenses for those younger than 18 who drop out or are expelled.
3. Prohibit the insanity defense for defendants who intentionally failed to take needed medications and stop unconditional release if mental health depends on medication.
4. Allow victim-witnesses to be in the courtroom during the entire trial. Now, victims who are witnesses are not allowed to hear testimony of other witnesses.
5. Make it easier to obtain funding for domestic-violence victims.
6. Extend the statute of limitations for sex crimes to 22 years.
7. Make it harder for defendants to claim incompetency.
8. Allow judges to impanel a jury to help determine whether a defendant is competent.
9. Allow prosecutors to immediately appeal an incompetency ruling.
10. Not let defendants claim incompetency solely because they can't remember their crimes.

DWI/Vehicular Homicide Seminar in February

THE OFFICE OF PROSECUTION SERVICES and the Missouri Sheriff's Association are sponsoring their second annual DWI/Vehicular Homicide Seminar on Feb. 20-21 at the Lodge of Four Seasons, Lake Ozark.

Nationally recognized experts will give presentations on accident reconstruction and investigation, toxicology and courtroom testimony.

Cost of the seminar is $50, which includes lunch for both days. Attendance is limited.

Room reservations must be made by Feb. 1 by calling the lodge at 800-843-5253. The room rate is $52.

The seminar has been approved for 13 continuing education credits from POST through the Sheriff's Association. To get the credits, law enforcement officials will have to pay an additional $25 to the Missouri Sheriff's Academy. This fee will be collected at the conference.

For more information about the seminar or to register, contact the Office of Prosecution Services at **573-751-0619**.

Common-law court advocates convicted

A LINCOLN COUNTY jury convicted 15 common-law court advocates of tampering with a judicial official.

The AG's Office filed charges against them after they filed a $10.8 million bogus lien in April 1996 against a Lincoln County judge in an attempt to force him to drop a speeding case.

Jurors recommended 13 of the defendants spend two years in prison and the two leaders of the group be imprisoned for seven years.

FEDERAL LAW

CONTINUED from Page 1

Violation is a felony. The new legislation contains no exceptions or exemptions for law enforcement and military officers.

The federal law defines the crime as an offense, under either state or federal law, where the crime has "as an element, the use or attempted use of physical force, or the threatened use of a deadly weapon, committed by a current or former spouse, parent or guardian of the victim, by a person with whom the victim shares a child in common, by a person who is cohabiting with the victim as a spouse, parent or guardian, or by a person similarly situated to a spouse, parent or guardian of the victim."

COMPLYING WITH THE LAW

Chiefs and sheriffs may be liable if they provide weapons to officers they know or "reasonably should know" have been convicted of this crime.

At a minimum, agencies must ask all employees if they have been convicted. The sample **Qualification Form** on the next page is a suggested form that employers should require every employee to complete. (The form may be copied.) Since there is no central repository for these conviction records in Missouri, this form may be the only way for an employer to determine compliance.

If an employee has a conviction, the supervisor must decide how to handle the situation, accounting for employer needs and available alternatives. However, the employee should immediately turn in any firearms.

Front Line Report is published on a periodic basis by the Missouri Attorney General's Office, and is distributed to law enforcement officials throughout the state.

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QUALIFICATION FORM

Amendments to the federal Gun Control Act prohibit any person who has ever been convicted of a misdemeanor involving domestic violence from possessing any firearm or ammunition. The law defines a misdemeanor crime of domestic violence as an offense, under either state or federal law, where the crime has "as an element, the use or attempted use of physical force, or the threatened use of a deadly weapon, committed by a current or former spouse, parent or guardian of the victim, by a person with whom the victim shares a child in common, by a person who is cohabiting with the victim as a spouse, parent or guardian, or by a person similarly situated to a spouse, parent or guardian of the victim."

1. Have you ever been convicted of a misdemeanor crime of domestic violence?

Yes_____ No_____

2. If "Yes," provide the following information with respect to the conviction(s):

Court/Jurisdiction _____ Statute/Charge _____

Docket/Case Number _____ Date of Judgment _____

You have a duty to complete this form and sign before a notary. Internal disciplinary action, including dismissal, may be undertaken if you refuse to answer or if you fail to reply fully and truthfully. Neither your answers nor any information or evidence gained by reason of your answers can be used against you in any criminal prosecution for a violation of this law. However, the answers you give and information or evidence resulting therefrom may be used against you in a prosecution for knowingly and willfully providing false statements or information, and/or in the course of internal disciplinary proceedings.

. . . . . .

I hereby certify that the above information is true, correct and complete based on my personal knowledge and belief. I understand that providing false or fraudulent information may be grounds for adverse action, up to and including termination of employment.

Name (print or type)_____

Date _____ Signature _____

Subscribed and sworn to before me the _____ day of _____ , 1997.

Commissioned in _____ County, Missouri.

Notary Public _____

UPDATE: CASE LAWS

MISSOURI SUPREME COURT

State v. Shaun Alexander Rushing
No. 78838
Mo.banc, Nov. 19, 1996

The court applied the "plain feel" doctrine to a *Terry Stop* as outlined in *Minnesota v. Dickerson,* 508 U.S. 366 (1993). The issue was whether a search exceeded the scope of *Terry v. Ohio,* based on whether the incriminating nature of an object felt was immediately apparent to the officer.

The officer testified that during a *Terry* patdown, he found an object that felt like a container commonly used to carry crack cocaine. Because he believed the container held crack, he removed it from a pocket and discovered a cylindrical medicine bottle containing 10 rocks of crack and rice.

In overruling the motion to suppress, the court relied on the officer's experience as well as a list of cocaine arrest and seizures in the area and the type of container found.

The court held that an item in plain view must be "immediately apparent" as contraband or other evidence as equated with the probable cause standard. Thus, to justify a seizure under the plain-feel doctrine, an officer must have probable cause to believe the item felt is contraband.

Probable cause exists when the facts and circumstances within the knowledge of the seizing officer are sufficient to warrant a person of reasonable caution to believe the item may be contraband or other crime evidence. The court held that the facts would lead a reasonable person to believe drugs were in the container.

The officer had probable cause to conclude the defendant was carrying cocaine before he seized the container based on:

1. The feel of the object.
2. Knowledge of the suspicious conduct observed of the defendant.
3. Reputation of the neighborhood as a drug trafficking area.
4. Officer's knowledge of commonly used drug containers.

The court also refused to reject the plain-field doctrine as violating Article 5, Section 15 of the Missouri Constitution.

In a dissenting opinion, Judge Ann Covington wrote that the effect of the majority opinion was to reduce the probable cause standard to reasonable suspicion. She opined that the nature of the bottle as contraband was not apparent until after the officer removed the bottle.

State v. Nicole Gentry
No. 79045
Mo.banc, Dec. 17, 1996

The defendant was prosecuted for violating the terms of a full order of protection, a Class A misdemeanor in violation of Section 455.085.8, RSMo. 1994.

That statute requires a court issuing such an order to serve the respondent with a copy of the full order of protection.

The "respondent" did not have actual notice of the order until her arrest when an officer read it to her. The court held that under facts of the case, due process requires that the respondent receive notice of the existence of the full order before she may be arrested for violating it.

The court cautioned against reading this case too broadly. There may be criminal convictions under Section 455.080.8 of which a reviewing court may properly conclude that a defendant had actual notice of the full order, although there was no legal notice, and that actual notice sufficiently met requirements of due process.

Thomas J. Teson v. Director of Revenue
No. 78991
Mo.banc, Dec. 17, 1996

Section 577.041.1, RSMo 1994, requires that a law enforcement officer making a DWI arrest "shall inform the person that his license shall be immediately revoked upon his refusal to take the test [to determine the alcohol content of his blood]."

In this case, the officer complied with the statute but omitted the word "immediately." The court adopted an actual prejudice standard and held that the mere failure to use the word "immediately" in warning the arrestee of the consequences of refusal would not automatically prohibit the revenue director from revoking a drivers license.

When the arresting officer fails to use the statute's words in reciting the warning, the test to determine whether an arrestee's decision to refuse to take a chemical test is an informed one is whether the warning was so deficient as **actually to prejudice** the arrestee's decision-making process.

In adopting the actual prejudice standard, the court overruled the "technical compliance test" established in *Logan v Director of Revenue*, 906 S.W.2d 888 (Mo.App., W.D., 1995) as wrongly decided.

UPDATE: CASE LAWS

State v. Brian J. Kinder
No. 75082
Mo.banc, Dec. 17, 1996

The court addressed the admissibility of DNA statistical evidence derived by using the "product rule." The RFLP method was used to determine the genetic profile for the DNA samples.

The court held that the product rule is generally accepted in the scientific community, and that population frequency statistics based on the rule are admissible. Any criticism of the reliability of the product rule or of the methods used to apply the rule pertains only to the significance to be given the DNA evidence by the jury.

EASTERN DISTRICT

State v. Ronald E. George
No. 67883
Mo.App., E.D., Nov. 12, 1996

The trial court did not abuse its discretion in refusing to allow the defendant to present a consent defense based on Section 565.080 in a second-degree assault case.

The defendant was a patient in the psychiatric intensive care unit of a hospital and was charged with assaulting two security guards. The defendant attempted to inject the consent defense based on the victims' profession as security guards. The consent statute is intended to protect acceptable acts committed during employment that would otherwise be subject to prosecution but which are committed in furtherance of one's employment. Authorizing a person to assault a worker who attempts to calm a person's abusive or disruptive behavior would not further the statute's intention.

State v. Anthony Todd
No. 69076
Mo.App., E.D., Oct. 29, 1996

In a prosecution of involuntary manslaughter, a hospital blood test report that contained analysis of the defendant's blood alcohol content was admissible as a business record under Section 490.692.1, RSMo. Supp. 1993. The court rejected the defendant's contention that Missouri's Implied Consent Law is the exclusive means to admit blood alcohol test results. (See Section 577.020 through 577.041.)

The court noted that the test was not conducted at the request or direction of a law enforcement officer nor for the purpose of litigation under the Implied Consent Law. Rather, the defendant's blood was tested during medical diagnosis and treatment.

According to the plain language of the Implied Consent Law and Regulations, the requirements and protection provided by the Implied Consent Law do not apply to all blood tests offered as evidence but only to those offered pursuant to Chapter 577. The court found that the prosecutor laid a proper foundation under the Uniform Business Records Act.

State v. Richard Thiele
No. 67481
Mo. App., E.D., Oct. 29, 1996

There was sufficient evidence of the defendant's guilt of forcible sodomy when he grabbed the victim's arm in an attempt to force her to touch his genitals and told the victim he wanted her to touch him. While the defendant argued this was insufficient evidence of forcible compulsion, the court found that the defendant physically reached out and, with force calculated to overcome resistance, tried to make the victim touch him.

State v. Howard Chapman
No. 67368
Mo. App., E.D., Nov. 5, 1996

A Division of Family Services worker's testimony that the victim had described sexual abuse by the defendant did not constitute improper hearsay.

The testimony did not give any details about the abuse incidents. It was not offered to show abuse occurred, but to explain the catalyst for investigating the defendant.

The defendant also failed to show how admission of the testimony prejudiced him since hearsay evidence is objectionable in law because the person who makes the statement is not under oath and is not subject to cross-examination. The victim, who was present in court, testified in detail about the allegations and was extensively cross-examined by the defendant.

Elizabeth Ziegler, executive director of the Missouri Office of Prosecution Services, prepares the Case Law summaries for Front Line.

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State Supreme Court upholds drug checkpoints

THE MISSOURI Supreme Court became the first court in the country to validate the use of checkpoints or roadblocks to detect drug couriers.

In *State v. Richard Damask,* No. 78826 (Mo. banc, Dec. 17, 1996), the court held that roadblocks set up to detect drug couriers are constitutional as long as they are conducted in a nondiscriminatory manner with safeguards.

The two checkpoints at issue were in Franklin and Texas counties. A large sign was set up on divided highways indicating "Drug Checkpoint" ahead. However, the roadblock actually was held at an isolated, little-used exit ramp located beyond the sign. These exits had no service stations or restaurants and primarily were used by local motorists.

At the top of the exit ramp, a uniformed officer stopped all motorists, checking their licenses and destinations. Most stops lasted less than a minute unless reasonable suspicion was found. Drug detection dogs circled the vehicles and if "alerted," probable cause was found to justify a vehicle search.

The Supreme Court found that drug roadblocks, when conducted similarly to DWI roadblocks and in a nondiscriminatory manner (every motorist is stopped and the same questions are asked) advance the state's strong interest in stopping the flow of illegal drugs and do not violate the Fourth Amendment.

"I commend the departments and prosecutors involved in these cases for aggressively responding to the country's drug problem and for standing up to the defendants' legal challenges," said Attorney General **Jay Nixon**. "Although the lower courts initially ruled the roadblocks were unconstitutional, they appealed to the Supreme Court, which set a precedent that not only will impact the state, but the nation."